

**From:** William Gray [wgray@opticom.com]  
**Sent:** Tuesday, March 15, 2005 5:18 PM  
**To:** restructure.sizestandards@sba.gov  
**Subject:** RIN 3245-ZA02  
Mr. Gary M. Jackson  
Assistant Administrator for Size Standards  
409 Third Street, SW.  
Washington, DC 20416

Dear Mr. Jackson:

Following find our firm's response to the SBA invitation for "Comments on Changes to SBIR Eligibility & Restructuring its Size Standards".

"This ANPRM also seeks comments on an issue concerning the participation of businesses majority-owned by venture capital companies in the SBIR Program. Under SBA's affiliation regulations, a business concern that is majority-owned by a company must include the size of the company and all of its affiliates in determining small business status for the SBIR Program and for most other programs. SBA seeks public comments on whether it should provide an exclusion from affiliation with venture capital companies in determining small business eligibility for the SBIR Program, assuming such companies met the other eligibility criteria for the program." **We respectfully request the current requirement to include all affiliates in size determination for SBIR awards be maintained to protect smaller entities and respect the intent of the law.**

We are an engineering firm specializing in research and development projects. We have had several positive experiences with the Small Business Innovation Research (SBIR) Program but had one very disconcerting experience.

We were fortunate to obtain a Phase I contract. However when it came to awarding Phase II contracts we were passed over for a company with nearly \$200 million financing, most of which came from Venture Capital Partners. Another company with nearly \$100 million in financing, again mostly from Venture Capital Partners was awarded a Phase II contract. We believe both of these companies failed to meet the requirement that 51% be owned and controlled by individuals who are either US citizens

or permanent residents. It's difficult to believe these venture-backed companies with such significant capitalization could be considered "small" businesses. We believe this treatment does not meet the intent or specifics of the law. **We hope you will maintain the current status that these massively capitalized firms with a substantial list of venture capital affiliates not be allowed the "small business" classification. To do so would be unfair to the individually owned businesses of America.** Further, there should be a mechanism for appealing to the SBA rather than the contracting agency when an award is to a company that doesn't meet the small business criteria. Protesting to the contracting government agency that they have erred in awarding a contract is a conflict of interest that cannot lead to a proper review of their (own) actions.

The intent of the Small Business *Innovation* Research (SBIR) Program is to further small businesses research and development of new techniques and products. Often government agencies use the SBIR money to purchase current off-the-shelf products in an effort to increase expenditures that were not in approved budgets. **We urge the SBA to strengthen guidelines and controls in this area so funds are used for small business innovation research and not purchases of current off-the-shelf products.**

"More than 2,300 comments that supported the proposal agreed with the position advanced by one organization by submitting an identical comment, which focused primarily on the proposal to revise the 500 employee size standard for nonmanufacturers to 100 employees." **We concur that businesses other than manufacturers should be limited to 100 employees.** Where a manufacturer could be considered small with 300 or 400 employees, research and development companies would be huge with 200 employees.

To summarize our concerns:

- Ø All affiliates (including Venture Capital Partner/Investors) should be counted in determining minimum fifty-one percent of individual ownership requirements
- Ø All affiliates (parent and brother/sister) should be counted in determining number of employees limitations

- Ø Size protests should be reviewed by SBA rather than the contracting agency
- Ø SBIR contracts should be for innovative research and not for purchase of off-the-shelf products
- Ø Small business research firms should be limited to 100 employees

Thank you for considering our comments. We appreciate this opportunity to express our concerns. We sincerely hope the intent of the SBIR program will be protected and enhanced by your actions. Significant new techniques and products have been developed by the small businesses in the United States. Strengthening and protecting the awards to assure small businesses are supported fulfills the intent of the law, encourages innovation and helps build our economy.

Very truly yours,

OptiComp Corporation  
William L. Gray  
Director of Accounting